

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEB - 9 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In Matter of)
)
COMSAT Corporation)
Petition for Partial Waiver)
of the Universal Service Contribution)
Requirement Contained in Section)
54.703 of the Commission's Rules,)
47 C.F.R. § 54.703 (1997))

CC Docket No. 96-45

COMMENTS OF MICRODEVICES WORLDWIDE INC.

Microdevices Worldwide Inc. ("Microdevices"), by its attorney, respectfully submits the following comments generally supporting COMSAT Corporation's ("COMSAT's") Petition for Partial Waiver ("Petition") in response to the Federal Communications Commission's ("Commission's") Public Notice, DA 98-185, released on January 30, 1998, in the above-captioned matter.¹

I. BACKGROUND AND INTRODUCTION

Microdevices generally supports COMSAT's Petition and urges the Commission to also extend the same relief which COMSAT is seeking to carriers, such as Microdevices, which also provide only *de minimis* interstate services.

¹ Microdevices expects to separately file a petition for partial waiver in the near future to exclude its international revenues from its Universal Service contribution base, or in the alternative, to exclude from its contribution base international revenues derived from calls originating outside the U.S.

Microdevices is a small carrier which provides international callback services primarily from the Caribbean and Latin America to the U.S. and other foreign points.² As an international callback provider, Microdevices provides only minimal interstate services.³ In fact, almost all of Microdevices' traffic originates in foreign countries.⁴ Even so, under Section 54.703 of the Commission's Rules, 47 C.F.R. § 54.703 (1997), because Microdevices provides a minimal amount of interstate telecommunications services, it is required to contribute to the Universal Service fund based on both interstate and international revenues. According to Microdevices' estimates, its Universal Service contributions will be *more than three times* its total interstate revenues for 1997.⁵ Therefore, Microdevices urges the Commission to permit carriers providing minimal interstate services to contribute to the Universal Service fund based on only their interstate revenues.

² Microdevices received its 214 Authorization on May 15, 1995. Overseas Common Carrier Section 214 Applications Actions Taken, Public Notice (May 24, 1995).

³ For example, in 1997, only 0.59% of Microdevices' total revenues were derived from calls which originated and terminated within the U.S.

⁴ Approximately 94% of Microdevices' total revenue is derived from calls which originate outside of the United States.

⁵ Microdevices estimates that its total 1997 end-user revenues for the provision of interstate services is \$28,684.92. Based upon the contribution factors established by the Commission, Microdevices estimates its total 1998 Universal Service contributions will be approximately \$95,292.44. See First Quarter 1998 Universal Service Contribution Factors Revised and Approved, CC Docket No. 96-45, DA 97-2623, Public Notice (December 16, 1997).

II. THE COMMISSION SHOULD ALLOW CARRIERS TO EXCLUDE INTERNATIONAL REVENUES FROM THEIR UNIVERSAL SERVICE CONTRIBUTION BASE WHERE THE CARRIER PROVIDES ONLY *DE MINIMIS* INTERSTATE SERVICES

Microdevices generally supports COMSAT's Petition and further urges the Commission to also allow Microdevices, a carrier which provides only minimal interstate services, to exclude international revenues from its Universal Service contribution base. Such a ruling meets the required standard for waiver established in Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3 (1997), and applicable case law.⁶ As demonstrated below, application of Section 54.703 of the Commission's Rules to Microdevices is clearly not in the public interest.

Application of Section 54.703 of the Commission's Rules to Microdevices produces arbitrary and irrational results. Like COMSAT, Microdevices' Universal Service contributions for 1998 will also be greater--*over three times greater*--than all of its 1997 interstate revenues combined. Because Microdevices provides limited interstate services, even if only less than one percent of its total yearly revenues are derived from the provision of interstate services, Section 54.703 of the Commission's Rules requires Microdevices to contribute to the Universal Service fund based on both its interstate and international revenues. Yet, carriers which do not provide any interstate telecommunications services are not required to make such contributions. As such, Microdevices agrees with COMSAT that these results discourage competition and are fundamentally unjust. Thus, the Commission should allow Microdevices to exclude from its

⁶ Section 1.3 of the Commission's Rules states that the Commission may grant a waiver for good cause shown. See also Northwest Cellular Telephone v. FCC, 897 F. 2d 1164, 1166 (D.C. Cir. 1990) (waiver appropriate where strict compliance would be inconsistent with the public interest); WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

Universal Service contribution base revenues derived from the provision of international telecommunications services.

Application of Section 54.703 of the Commission's Rules to Microdevices is also contrary to Section 254(d) of the Telecommunications Act of 1996 ("1996 Act"), 47 U.S.C. § 254(d) (1996), which requires that carriers contribute to Universal Service on an equitable and non-discriminatory basis. Section 53.704 of the Commission's Rules requires carriers to include in their contribution base international revenues, even where the calls originate in foreign points and terminate within the U.S.⁷ However, foreign carriers which do not provide any U.S. interstate services are not required to make any Universal Service contributions.⁸ Because approximately 94% of Microdevices' international traffic originates in foreign points, its competitors are almost exclusively foreign providers of telecommunications services which do not provide any U.S. interstate traffic and therefore are not required to contribute to the Universal Service fund. Microdevices, on the other hand, is required to make contributions based on all of its international revenues, putting Microdevices at a competitive disadvantage *vis-a-vis* its foreign competitors.

The impact which this has on a company such as Microdevices should not be underestimated. Microdevices' overseas customers are unlikely to be receptive to any rate increases or surcharges which Microdevices may apply to recoup all or part of the Universal

⁷ 47 C.F.R. § 54.703 (1997). See also In Re Federal-State Joint Board on Universal Service, Report and Order in CC Dkt. No. 96-45, ¶ 779 (May 8, 1997)(appeal pending)("Report and Order")(stating that the definition of international communications includes communications to any place in the U.S. from a foreign country).

⁸ Report and Order at ¶ 779.

Service assessment on end user invoices. Unlike customers in the U.S. who will inevitably incur flow-throughs of the Universal Service assessments, overseas customers will simply elect to take service from a foreign competitor which is not subject to Universal Service assessments. Such a result was contemplated by Commissioner Chong, who, for that reason, dissented from the portion of the Report and Order which requires carriers to base their contributions on both interstate and international revenues.⁹ As such, Section 54.703 discriminates against Microdevices and therefore violates Section 254(d) of the 1996 Act.

Furthermore, Section 54.703 of the Commission's Rules violates the Commission's Principle of Competitive Neutrality, which requires Universal Service support mechanisms and rules to be competitively neutral.¹⁰ In its Report and Order, the Commission adopted the Principle of Competitive Neutrality because "an explicit recognition of *competitive neutrality in the collection* and distribution of funds and determination of eligibility in universal service support mechanisms is consistent with congressional intent and necessary to promote a pro-competitive, de-regulatory national policy framework."¹¹ However, Section 54.703 of the Commission's Rules is not competitively neutral. As discussed above, Section 54.703 of the Commission's Rules gives foreign carriers which do not provide interstate services an unfair advantage over carriers, such as Microdevices, which provide only minimal interstate services but must contribute to the Universal Service fund based on both interstate and international

⁹ Id. at Separate Statement of Commissioner Rachelle B. Chong, Concurring in Part, Dissenting in Part, at 3 (stating that Section 53.704 of the Commission's Rules could place carriers with both interstate and international revenues at a competitive disadvantage against other carries that provide only international service).

¹⁰ Report and Order at ¶ 47.

¹¹ Id. at ¶ 48 (emphasis added).

revenues. As such, because Section 54.703 is not competitively neutral, it violates the Commission's Principle of Competitive Neutrality.¹²

Finally, application of Section 53.704 of the Commission's Rules to carriers such as Microdevices will also undermine the Commission's long standing goals of promoting effective competition in the global marketplace and reducing the price of international telephone services.¹³ The Commission recognized that international callback services promote the public interest by providing "increased competition in foreign markets which places significant downward pressure on foreign collection rates, to the ultimate benefit of U.S. consumers and industry whether located within the United States or abroad."¹⁴ Yet, as discussed above, application of Section 54.703 of the Commission's Rules places carriers such as Microdevices

¹² In addition, allowing Microdevices to exclude its international revenues from its contribution base would not unfairly advantage Microdevices over other U.S. carriers. U.S. carriers generally provide international services which originate in the U.S. and terminate in foreign points. Because Microdevices does not compete with such carriers, U.S. carriers would not be disadvantaged if Microdevices was allowed to exclude its international revenues from the Universal Service contribution base. See supra at n.4.

¹³ See In Re International Settlement Rates, Notice of Proposed Rulemaking in IB Dkt. No. 96-261, FCC 96-484, ¶¶ 5, 10 (Dec. 12, 1996) ("Settlement NPRM").

¹⁴ In Re VIA USA, Ltd. TELEGROUP, INC. Applications for Authority Under Section 214 of the Communications Act of 1934, as amended, to operate as International Resale Carriers; DISCOUNT CALL INTERNATIONAL CO. Application for Authority under Section 214 of the Communications Act of 1934, as amended, Order on Reconsideration, FCC 95-224, 78 Rad. Reg. 2d (P & F) 810, ¶ 28 (June 15, 1995). The Commission also acknowledged that reduced prices for international services significantly stimulates traffic flows and thereby (1) increases revenues for U.S. and foreign carriers, (2) stimulates traffic flows, and (3) provides additional financing for network infrastructure. Settlement NPRM at ¶ 10. In fact, the Commission stated that "policies that encourage such expansion of the global network are vital in the light of the fact that some two thirds of the world's population have no access to a telephone." Id. Ironically, the Commission's implementation of Section 53.704, because it will discourage competition and increase rates in the international marketplace, will reduce the amount of funds available for allocation to expansion of the global network.

at a competitive disadvantage *vis-a-vis* their foreign carrier competitors, thereby reducing the downward pressure on foreign collection rates and decreasing competition in the international marketplace. Thus, Section 53.704 of the Commission's Rules undermines the Commission's policies of increasing competition and reducing prices for international services.

III. CONCLUSION

For the reasons stated above, Microdevices generally supports COMSAT's Petition and urges the Commission to extend the same relief requested by COMSAT to similarly situated carriers, such as Microdevices, which only provide *de minimis* interstate services.

Respectfully submitted,



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Dated: February 9, 1998